HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22776 of 2006

Between:

B.Lingaiah Yadav … Petitioner

AND

District Educational Officer,
Nalgonda and others. … Respondents

:: O R D E R ::

Counsel for the petitioner : Sri V. Sathya Prasad

14th December, 2006

Per G.S.Singhvi, C.J.

The petitioner, who is an advocate and also the Sarpanch of Karivarala Gram Panchayat, has filed this petition for issue of a mandamus to respondent Nos.1 and 2 to close Chand Pasha School, Karivarala Village, Nadigudem Mandal, Nalgonda District, which is being run by respondent No.3 – Shaik Chand Pasha.

We have heard Sri V. Satya Prasad and perused the record. In

our opinion, the writ petition is liable to be dismissed because,

i) the affidavit filed in support of the writ petition has not been verified as per the requirement of Rule 5 of the Writ Proceedings Rules, 1977 and Order XIX, Rule 3 of the Code of Civil Procedure, which reads as under:

Rule 5:

a) every affidavit shall be drawn up in the first person and shall set forth succinctly and in chronological order all the relevant facts and the grounds for the relief sought. The statement of facts shall be divided into consecutively numbered paragraphs, each paragraph being confined as nearly as may be to a distinct portion of the subject;

b) the affidavit shall state—

i) the particular right conferred by the provisions of Part III of the Constitution sought to be enforced;

ii) the other purpose for which relief is sought;

iii) the particular law impugned and how it is not constitutionally valid and whether it is a State Law, Central Law or State and Central Law;

iv) whether any alternative remedy for the relief sought is provided for by or under any other law for the time being in force, and whether that remedy has been availed of and if so, with what result, by way of a separate paragraph;

v) whether the petitioner had or had not already filed a writ petition in the High Court or instituted any suit or other legal proceedings in any Court of Law or Tribunal either for the same or

substantially the same relief on a previous occasion and if he had done so, the particulars of the petition, suit or other proceedings and the result thereof shall also be mentioned in the affidavit, by way of a separate paragraph.

c) when the deponent speaks to facts within his knowledge he shall do so directly and positively using the words;

'I make oath (or affirm) and say ……

d) when a particular fact is not within the deponent's knowledge, but is stated upon information the deponent shall use the words I am informed by (giving the source of information) and verily believe it to be true and set out the grounds of his behalf.

e) Every affidavit stating any matter of opinion shall show the qualification of the deponent to express such opinion by referring to his length of experience, acquaintance with or other means of knowledge of the person or matter as to which the opinion is expressed.

f) A petition for a Writ of Habeas Corpus shall be accompanied by an affidavit by the person restrained setting out the nature and circumstances of the restraint:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the petition shall be accompanied by an affidavit made by some other person acquainted with the facts, which shall state the reason why the person restrained is unable to make the affidavit.

g) An application shall state the provisions of Law under which it is made and shall not contain more than one prayer unless the prayers are consequential;"

The verification of the affidavit of the petitioner reads as under:

" I, Sri B. Lingaiah Yadav, S/o Late B. Veeraiah, beingl the petitioner herein, acquainted with the facts do hereby verify and state that the contents of above paras of the affidavit filed in support of the Writ Petition are true to my personal knowledge, and based on legal advice believed to be correct."

The aforesaid verification is not in conformity with the requirement of Rule 5. Therefore, the same is liable to be ignored.

ii) even if we were to ignore the above fundamental defect in the constitution of the writ petition, we do not find any valid ground to entertain the petitioner's prayer for directing respondent Nos.1 and 2 to close the school run by respondent No.3 because, the petitioner has not produced any tangible evidence to show any element of public interest which may justify closure of a running school on the ground that the same has not been recognized; and

iii) the petitioner has not impleaded the students, who have been admitted in the school run by respondent No.3, and this Court cannot make an order, which may result in adversely affecting the career and the future of the students, who are receiving education in the school run by respondent No.3.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.Nos.28981 and 31932 of 2006 filed by the petitioner for interim relief are also dismissed.

G.S.SINGHVI, C.J.

14th December, 2006.

C.V.NAGARJUNA REDDY, J.

ARS/ksld